

Item SPR06-16 Response Form

Title: Related Cases (amend Cal. Rules of Court, rule 804)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-16

Title	Related Cases (amend Cal. Rules of Court, rule 804)
Summary	Rule 804 of the California Rules of Court currently requires counsel to provide notice to the court of any related cases. The rule would be amended to provide procedures for assigning related cases and to make the rule clearer and more effective.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p>Several significant changes would be made to rule 804. First, the definition of "related case" has been modified. Subparagraphs (a)(5) and (a)(6), which are not in the current definition in rule 804, would be added. New subdivision (a)(5) provides that related cases would include those that are "the same or substantially the same as an earlier case in the superior court that has been dismissed either with or without prejudice." New subdivision (a)(6) of the definition provides that related cases include ones "likely for other good reasons to require substantial duplication of judicial resources if heard by different judges."</p> <p>Second, subdivision (b) has been amended to require parties—not just counsel—to provide notice of related cases. It also has been modified to require that notice be provided only of related state, but not federal, cases.</p> <p>Third, the contents of the Notice of Related Case in subdivision (c) have been modified to require that the notice identify the department in which the case is pending. Also, subdivision (c) would require a copy of any complaint, cross-complaint, and other relevant document to be attached to the notice.</p> <p>Fourth, subdivision (d) provides that the Notice of Related Case must be filed in all cases listed in the notice and on all parties in those cases.</p> <p>Fifth, in subdivision (e), the time for service of the notice is specified. Instead of "promptly" the time would be "as soon as possible, but no later than 15 days, after the facts concerning their existence if related cases become known."</p>

Sixth, subdivision (f) provides that there is a continuing duty to provide notice of related cases to the court and all parties.

Seventh, in new subdivision (g), the time for service and filing a response to a notice is changed from 10 to 5 days after service of the notice.

Eighth, the main new provision in the rule is subdivision (h). The amended rule provides procedures for ordering cases to be related, both within a superior court and in different courts.

If all the related cases are pending in one superior court, the court, on notice to all parties, may order that the cases, including probate and family law cases, be related and assigned to a single judge or department. In a superior court that uses a master calendar, the presiding judge or the judge designated by the presiding judge may order the cases related. In a court in which cases are assigned to a single judge or department, the rule prescribes which judge or department determines whether cases should be ordered related and to whom they should be assigned. It should be noted that the effect of subdivision (a)(5) (defining related cases as including previously dismissed cases) combined with subdivision (h)(1) would be that a previously dismissed and refiled case would go back to the judge to whom it was initially assigned for a determination where it should be assigned.

If related cases are pending in different superior courts, the rule provides that the court where the earliest case was filed may confer informally to coordinate proceedings. Alternatively, courts may proceed formally, following the case coordination statutes and rules.

The rule provides that the provisions for relating cases in subdivision (h) do not apply to complex cases under rule 1800 et seq.

Ninth, new subdivision (i) requires the court, judge, or department that issues an order relating cases either (1) to file a notice of the order in all pending cases and serve a copy of the order on all parties in those cases or, alternatively, (2) to direct counsel for a party to prepare and file the notice in all pending cases and serve it on all parties.

Tenth, new subdivision (j) explains what happens to a case if it is not

ordered to be related.

Finally, new subdivision (k) contains two exceptions to the requirements under the rule. A party is not required to serve a Notice of Related Case if (1) all related cases are already assigned to the same judge or department, or (2) another party has already filed a notice and served all parties under the rule.

NOTE: If rule 840 is amended as proposed, *Notice of Related Case* (form CM-015) would be revised to conform to the amended rule.

Attachment

Proposal

Rule 804 of the California Rules of Court would be amended, effective January 1, 2007, to read:

Rule 804. ~~Notice of~~ Related cases

(a) [Definition of “Related cases”] Civil cases are related when the cases:

- (1) Involve the same parties and are based on the same or similar claims;
- (2) Arise from the same or substantially identical transactions, incidents, or events;
- (3) Involve claims against, title to, possession of, or damages to the same property;
- (4) Require the determination of the same or substantially identical questions of law or fact;
- (5) Are the same or substantially the same as an earlier case in the superior court that has been dismissed either with or without prejudice; or
- (6) Are likely for other good reasons to require substantial duplication of judicial resources if heard by different judges.

~~(a)(b)~~ **[Duty of counsel to provide notice]** Whenever ~~counsel~~ a party in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending in any state ~~or federal~~ court in California, ~~counsel~~ the party shall ~~must~~ promptly file and serve ~~serve and file~~ a Notice of Related Case. ~~The Notice shall also be served on all known parties in each related action or proceeding. It shall state the court, title, case number, and filing date of each related action or proceeding, together with a brief statement of their relationship. If the case is pending in the same court, it shall also give reasons why assignment to a single judge is or is not likely to effect economies.~~

(c) [Contents of the notice] The Notice of Related Case must:

- (1) List all civil cases that are related by court, case name, case number, and filing date;
- (2) Identify the case that has the earliest filing date and the court and department in which that case is pending; and

(3) State the relationship between the related cases, attaching complaints, cross-complaints, and other relevant documents.

(d) [Service and filing of notice] The Notice of Related Case must be filed in all cases listed in the notice and served on all parties in those cases.

(e) [Time for service] The Notice of Related Case must be served and filed as soon as possible, but no later than 15 days, after the facts concerning the existence of related cases become known.

(f) [Continuing duty to provide notice] ~~This~~ The duty under (b)–(e) is a continuing duty that applies when counsel a party files a case with knowledge of a related action or proceeding, and applies thereafter whenever counsel a party learns of a related action or proceeding.

(b) [Definition of related case] ~~An action or proceeding is “related” to another when both:~~

~~(1) involve the same parties and are based on the same or similar claims; or~~

~~(2) involve the same property, transaction, or event; or~~

~~(3) involve substantially the same facts and the same questions of law.~~

(e)(g) [Response] ~~Within 10~~ 5 days after service upon on a party of a Notice of Related Case, the party may serve and file and serve a response supporting or opposing the notice. The response must state why one or more of the cases listed in the notice are not related or why other good cause exists for the court not to transfer the cases to or from a particular court or department. The response must be filed in all cases listed in the notice and must be served on all parties in those cases. A timely response will be considered when the court determines what action may be appropriate to coordinate the cases formally or informally.

(d)(h) [Judicial action]

(1) Related cases pending in one superior court

If all the related cases are pending in one superior court, the court, on notice to all parties, may order that the cases, including probate and family law cases, be related and may assign them to a single judge or department. In a superior court that uses a master calendar, the presiding judge or judge designated by the presiding judge may order the cases related. In a court in which cases are

1 assigned to a single judge or department, cases may be ordered related, as
2 follows:

3
4 (A) Where the cases listed in the notice are all unlimited civil cases, or all
5 limited civil cases, the judge who has the earliest filed case must
6 determine whether the cases should be ordered related and assigned to
7 that judge's department.

8
9 (B) Where the cases listed in the notice include both unlimited and limited
10 civil cases, the judge who has the earliest filed unlimited civil case must
11 determine whether the cases should be ordered related and assigned to
12 that judge's department.

13
14 (C) Where the cases listed in the notice contain a probate or family law case,
15 the presiding judge or a judge designated by the presiding judge must
16 determine whether the cases should be related and, if so, to which judge
17 or department they should be assigned.

18
19 (D) In the event that any of the cases listed in the notice are ordered not
20 related under (A), (B), or (C), any party in any of the cases listed in the
21 notice may file a motion with the presiding judge or the judge designated
22 by the presiding judge to have the cases related.

23
24 (E) If the procedures for relating cases under this rule do not apply, the
25 procedures under Code of Civil Procedure section 1048 and rule 367 must
26 be followed to consolidate cases pending in the same superior court.

27
28 (2) *Related cases pending in different superior courts*

29
30 (A) If the related cases are pending in more than one superior court, on notice
31 to ~~counsel~~ all parties, the judge to whom the earliest filed case is assigned
32 may confer informally with the parties; and with the judges to whom each
33 related case is assigned to determine the feasibility and desirability of
34 joint discovery orders and other information or formal means of
35 coordinating proceedings in the cases.

36
37 (B) If it is determined that related cases pending in different superior courts
38 should be formally coordinated, the procedures in Code of Civil
39 Procedure section 403 and rule 1500 must be followed for noncomplex
40 cases.

41
42 (3) *Complex cases*

1
2 The provisions in (1) and (2) of this subdivision do not apply to cases that have
3 been designated as complex by the parties or determined to be complex by the
4 court. The procedures in Code of Civil Procedure section 404 et seq. and rule
5 1800 et seq. must be followed for complex cases.
6

7 (i) [Ruling on related cases] The court, department, or judge that issues an order
8 relating cases under this rule must either:
9

10 (1) File a notice of the order in all pending cases and serve a copy on all parties
11 listed in the Notice of Related Case; or
12

13 (2) Direct counsel for a party to prepare and file the notice in all pending cases and
14 serve a copy on all parties.
15

16 (j) [Cases not ordered related] In the event that for any reason a case is not ordered
17 related under this rule, that case will remain assigned to the court, judge, or
18 department in which it was pending at the time of the service and filing of the
19 Notice of Related Case.
20

21 (k) [Exceptions] A party is not required to serve and file a Notice of Related Case
22 under this rule if:
23

24 (1) All related cases are already assigned to the same judge or department; or
25

26 (2) Another party has already filed a notice and served all parties under this rule.